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6 IN THE UNITED STATES DISTRICT COURT
7 FOR THE DISTRICT OF ARIZONA

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9 Diana Martin,
10 Plaintiff,

No. CV 09-2133-PHX-ROS

11 vs.

ORDER

12 Family Lending Services, Inc.; et al.,
13 Defendants.
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16 An ex parte application for a temporary restraining order and preliminary injunction
17 was filed in this case on October 13, 2009 seeking to stop a Trustee's sale of a home set for
18 October 20, 2009. By random draw, this case was assigned to the Judge Silver. The
19 undersigned has been advised by the Clerk of the Court that Judge Silver is unavailable to
20 hear the request for emergency relief before October 20, 2009. Therefore, the undersigned
21 was drawn to hear the emergency request.

22 Today, the Court's staff twice attempted to contact Plaintiff to advise her of a time for
23 a hearing on her application. Staff called 480-343-7981, the only number listed on the
24 pleadings. The gentlemen who answered the phone at that number advised that no one by
25 Plaintiff's name was available at that number. No email address was provided on the
26 documents. Therefore, as of today, the day the undersigned was drawn to hear the
27 emergency matter, the Court has no ability to contact Plaintiff to hold a hearing before
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1 October 20, 2009. As a result, the Court will proceed to rule on the motion without a hearing.

2 As indicated above, Plaintiff seeks a temporary restraining order and an order to show
3 cause re: preliminary injunction. Federal Rule of Civil Procedure 65 does not allow a
4 preliminary injunction without notice. Fed.R.Civ.Pro. 65(a)(1). Thus, Plaintiff's request for
5 a preliminary injunction hearing without notice will be denied.

6 As for the motion for a temporary restraining order, if irreparable harm will be
7 suffered before notice can be provided, a temporary restraining order may issue without
8 notice. Fed.R.Civ.Pro. 65(b)(1)(A). In this case, Plaintiff received notice on July 21, 2009
9 that there would be a Trustee sale of the property on October 20, 2009. Doc. #4 at 16. For
10 reasons unknown to the Court, Plaintiff waited until October 13, 2009 (seven days before the
11 sale) to file her complaint. Plaintiff then argued that there was insufficient time to give
12 notice before she would be irreparably harmed.

13 By her delay, Plaintiff created her emergency. The Court does not find such action
14 to be cause to issue a temporary restraining order without notice. *See e.g. Comcast of Illinois*
15 *X, LLC v. Till*, 293 F.Supp.2d 936, 938-40 (E.D. Wisc. 2003); *Best Deals on TV, Inc. v.*
16 *Naveed*, 2007 WL 902564, *4 (N.D. Cal. 2007) (Plaintiff cannot show the need for a
17 temporary restraining order without notice when Plaintiff waited months after learning of the
18 situation to file the request).


19 Moreover, even if the Court were to reach the merits of Plaintiff's request, to obtain
20 a temporary restraining order or a preliminary injunction, Plaintiff must show: "that he is
21 likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of
22 preliminary relief, that the balance of equities tips in his favor, and that an injunction is in
23 the public interest." *Am. Trucking Ass'ns*, 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting
24 *Winter*, __ U.S. __, __, 129 S.Ct. 365, 374 (2008)). In this case, Plaintiff has failed to show
25 a likelihood of succession on the merits. *See Deissner v. Mortgage Electronic Registration*
26 *Systems*, 618 F.Supp.2d 1184 (D. Ariz. 2009); *Mansour v. Cal-Western Reconveyance Corp.*,
27 618 F.Supp.2d 1178 (D. Ariz. 2009) (both considering the same arguments raised by Plaintiff
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1 in her motion and finding the arguments to be without merit). Thus, for this additional
2 alternative reason, the motion for a temporary restraining order without notice will be denied.

3 Based on the foregoing,

4 **IT IS ORDERED** that the motion for temporary restraining order without notice and
5 the motion for an order to show cause for a preliminary injunction hearing (Doc. #4) are
6 denied.¹

7 DATED this 15th day of October, 2009.

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12 James A. Teilborg
13 United States District Judge
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27 ¹ This order is without prejudice to Plaintiff moving for a preliminary injunction with
28 notice if she can show the four requirements listed above. *See Am. Trucking Ass'ns*, 559
F.3d at 1052.